



POLICE DEPARTMENT

March 10, 2009

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Donna Gaudino
Tax Registry No. 897537
17 Precinct
Disciplinary Case Nos. 82442/06 & 83083/07

The above-named member of the Department appeared before me November 13, 2008, charged with the following:

Disciplinary Case No. 82442/06

1. Said Police Officer Donna Gaudino, assigned to the 17 Precinct, on or about February 11, 2006, at about 0330 hours, while on duty, in or about the vicinity of 800 2nd Avenue, New York County, did wrongfully fail and neglect to render all necessary police service in said police officer's assigned area, in that said police officer rendered no police service to stop or intervene in a fight outside a tavern near said location, and rendered no police assistance to other uniformed members of the service who had responded to a report of said fight. (*As amended*)

P.G. 202-21, Page 1, Paragraph 8 – POLICE OFFICER DUTIES AND RESPONSIBILITIES

Disciplinary Case No. 83083/07

1. Said Police Officer Donna Gaudino, assigned to the 17 Precinct, on or about January 16, 2007, in or about the Special Medical Division located at 1 Lefrak City Plaza, Queens, New York, did engage in conduct prejudicial to the good order, efficiency, or discipline of the Department, in that said police officer wrongfully told Dr. David Lichtenstein, Department Surgeon, that she was unable to drive and that said police officer's sister had driven her to the medical appointment, knowing that said statements were false and misleading.

P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT – PROHIBITED CONDUCT

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2. Said Police Officer Donna Gaudino, assigned to the 17 Precinct, on or about January 22, 2007, in or about the Special Medical Division located at 1 Lefrak City Plaza, Queens, New York, did engage in conduct prejudicial to the good order, efficiency, or discipline of the Department, in that said police officer wrongfully told Dr. David Lichtenstein, Department Surgeon, that she was unable to drive and that said police officer's sister had driven her to the medical appointment, knowing that said statements were false and misleading.

P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT –
PROHIBITED CONDUCT

3. Said Police Officer Donna Gaudino, assigned to the 17 Precinct, on or about January 31, 2007, in or about the Special Medical Division located at 1 Lefrak City Plaza, Queens, New York, did engage in conduct prejudicial to the good order, efficiency, or discipline of the Department, in that said police officer wrongfully told Dr. David Lichtenstein, Department Surgeon, that she was unable to drive, knowing that said statements were false and misleading.

P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT –
PROHIBITED CONDUCT

4. Said Police Officer Donna Gaudino, assigned to the 17 Precinct, on or about February 8, 2007, in or about the Special Medical Division located at 1 Lefrak City Plaza, Queens, New York, did engage in conduct prejudicial to the good order, efficiency, or discipline of the Department, in that said police officer wrongfully told Dr. Arnold Goldman, Department Orthopedic Surgeon, that she was unable to drive and that said police officer's sister had driven her to the medical appointment, knowing that said statements were false and misleading.

P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT –
PROHIBITED CONDUCT

The Department was represented by David Green, Esq., Department Advocate's Office, and the Respondent was represented by John Tynan, Esq.

The Respondent, through her counsel, entered a plea of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Disciplinary Case No. 82442/06

The Respondent is found Guilty as charged.

Disciplinary Case No. 83083/07

The Respondent is found Guilty as charged.

SUMMARY OF EVIDENCE PRESENTED

The Department's Case

The Department called Police Surgeon David Lichtenstein, Police Surgeon Arnold Goldman, Sergeant Jeffrey Rosenthal, Sergeant Nicholas Auriana, and Lieutenant Thomas Buzitta as witnesses.

Police Surgeon David Lichtenstein

Lichtenstein has been employed as a Department surgeon for seven years. Although he is currently assigned to the Candidate Screening Unit, he used to be assigned to the Special Medical District. He explained that the Special Medical District sees members of the service who have been designated Chronic Sick for taking excessive sick leave. He further explained that these members are scrutinized more carefully than other members.

Lichtenstein testified that on January 16, 2007, he met with the Respondent at his office in the Special Medical District at Lefrak City in Queens to evaluate her duty status after an injury. Lichtenstein explained that the Respondent had injured her right shoulder in a fall, and her right arm was in a sling. He stated that during the meeting he asked the Respondent specific questions about how she was doing in regards to her injury.

According to Lichtenstein, the Respondent told him that she was unable to move her right arm because of pain and swelling. When he asked her to move her arm as far as she could, the Respondent could not move it more than one degree (less than one inch away from her body). Lichtenstein testified that he was suspicious of the Respondent because “usually after a traumatic fracture or sprain of ligaments or even a gunshot wound to the shoulder, whether it be a relatively recent injury or within the last couple of weeks, most people should be able to have at least three to four inches of elevation until pain makes them stop.” Lichtenstein stated that after his suspicions were raised, he specifically asked the Respondent if she was able to drive. According to Lichtenstein, the Respondent told him that she could not drive and that her sister drove her to the appointment that day. Because Lichtenstein suspected that the Respondent’s actual range of motion was probably greater than what she displayed, he notified his supervisor, Lieutenant Dominick Valenti of the Absence Control Unit. Lichtenstein suggested to Valenti that somebody should follow the Respondent out to her car to see if it was true that she could not drive and had to be driven by her sister. He was later informed by Valenti that the Respondent was observed getting into her vehicle, taking her sling off, and driving away on her own.

On January 22, 2007, Lichtenstein saw the Respondent again in his office. He testified that on this occasion he conducted an even more precise interview of the Respondent. He asked the Respondent if there was any improvement, what her plan was for further care, and if she was able yet to drive herself to and from the Medical Division. According to Lichtenstein, the Respondent told him again that she could not drive and that her sister drove her to the appointment. She again raised her arm only about an inch when he asked to see how far she could move. Lichtenstein testified that the Respondent

proceeded to tell him specifically that she could not do any work, needed to be in a sling 24 hours a day, and could not drive at all because it was too painful to grip the steering wheel. Coincidentally, the Respondent parked her car that day under the window of the Absence Control Unit. Lichtenstein stated that after the Respondent left his office, he went into the Absence Control Unit and watched her with binoculars as she took off her sling, got in her car, made an unimpeded U-turn, and drove away. He testified that the Respondent appeared to be unimpaired.

On January 31, 2007, Lichtenstein saw the Respondent for a third time in his office. He testified that on this occasion, the Respondent showed some improvement, as she raised her arm 25 to 30 degrees (approximately two inches away from her body). The Respondent, nevertheless, still replied negatively when he asked her if she could drive. Lichtenstein did not specifically ask the Respondent on that day how she got to the Medical Division, and the Respondent did not offer that information. Lichtenstein told the Respondent on that day that he needed better documentation in order to maintain her on sick leave and that he was going to place her on limited duty status if she did not provide documentation on her next visit. As on the previous visit, Lichtenstein went into the Absence Control Unit, from where he observed the Respondent get in her car and drive away. He did not observe anybody else in the Respondent's car. According to Lichtenstein's records, that was the last time he saw the Respondent.

On cross-examination, Lichtenstein testified that his purpose in the Medical Division is to determine duty status of the members that are sent to see him. His determination is based on his observations and sometimes physical examination. Depending on the specific case, an examination can be cursory or exhaustive.

In the Respondent's situation, his examination consisted of seeing how far the Respondent could lift her arm. Lichtenstein was using the Respondent's range of motion to determine if she could be placed on limited duty status.

Lichtenstein was told that after the January 16, 2007 appointment, the Respondent removed her sling and was able to easily operate and control her vehicle with her affected right arm. He conceded that it might be possible for someone with a one-degree range of motion to drive if she keeps her elbow tucked into her side. On January 31, 2007, the Respondent's car was parked half a block away from the Medical Division building. Lichtenstein took notes on his meetings with the Respondent both during and after the meetings took place. None of the meetings was mechanically recorded. He reiterated that the Respondent specifically told him at two of their meetings that she was completely unable to drive and her sister drove her to the appointment. She also told him once that it was too painful for her to grip the steering wheel. Only he and the Respondent were present in the room during their meetings.

Police Surgeon Arnold Goldman

Goldman, who has been employed as a Department Orthopedic Surgeon for 15-and-a-half years, met with the Respondent on February 8, 2007. According to Goldman, the Respondent told him on that day that she could not drive and had to be driven to the appointment by her sister. Goldman did not doubt that the Respondent was, in fact, injured, and he showed her exercises that she could do to strengthen her arm. Goldman stated that he normally spends 15 to 20 minutes with each patient. After each meeting, he normally prepares notes about the examination he just completed. After meeting with the

Respondent, Goldman did not discuss the visit with Valenti. Goldman did not see the Respondent again after she left his office that day.

Sergeant Jeffrey Rosenthal

Rosenthal, a 17-year member of the Department currently assigned to the Internal Affairs Bureau, was formerly assigned to the Medical Division's Absence Control Investigations Unit. While in that unit, he assisted in the investigation of the Respondent's case. On January 31, 2007, Lichtenstein told him that he (Lichtenstein) suspected the Respondent's claim that she could not drive was false. Rosenthal proceeded to locate the Respondent's vehicle. From his office, Rosenthal was able to see the Respondent walk to her car, open the driver's door with her right hand, get into the car, lift her right arm across her body to reach the seatbelt located at her left shoulder, pull the seatbelt across her chest, make a three-point turn using her right hand, and drive away. According to Rosenthal, because the Respondent had her cell phone in her left hand, she used her right arm and hand to both turn the steering wheel and to shift the car into drive and reverse. Rosenthal watched this all through binoculars. Lichtenstein, Valenti, and a Sergeant Lanciotti were all watching the Respondent through the window, but Rosenthal was the only one who had binoculars. He stated that he had a clear view of the Respondent, and he was looking directly into the driver's side window once the Respondent made the turn. He further stated that he certainly observed the Respondent's right arm moving in a circular motion, and he described the Respondent's driving as smooth.

Rosenthal testified that Lichtenstein first brought the Respondent's case to his

attention on January 16, 2007. On that day, Lichtenstein told him that he did not feel the Respondent's lack of mobility was consistent with the nature of her injury. At Valenti's direction, Rosenthal followed the Respondent out of the building and observed her get into the driver's seat of her car, make two turns, and drive away. The Respondent was not wearing a sling, and nobody else was in the car with her. Rosenthal was close enough to the car not to need binoculars. According to Rosenthal, the Respondent's driving was smooth.

On January 22, 2007, Rosenthal watched from his office window as the Respondent exited the building. He testified that he observed the Respondent that day enter the driver's side door of her car, make a three-point turn, and use her right arm to reach the seatbelt over her left shoulder. As on January 31, the Respondent had her cell phone in her left hand and was using her right hand to steer the car. Nobody else was in the vehicle. Rosenthal again described the Respondent's driving as smooth. Later that day, Rosenthal went to [REDACTED] County to observe the Respondent in her residence. At approximately 6:00 p.m., the Respondent came to the door to receive a delivery. According to Rosenthal, he observed the Respondent sign for the package with her right hand. When the Respondent's dog jumped at the door, he also observed the Respondent push the dog down and pet the dog with her right hand as she held the package in her left hand.

On cross-examination, Rosenthal testified that when he observed the Respondent on January 16, 2007, he was standing directly across the street from her. He stated that he was able to look directly into the Respondent's car although there were two lanes of traffic between his location and the lane where the Respondent's car was parked. He further

stated that there is always traffic on that block. He did not see her reach for her seatbelt on that day.

Rosenthal testified that his office is on the sixteenth floor of the building, and the Respondent's car was parked 150 feet from the base of the building on January 22, 2007. There were six lanes of traffic between the building and the Respondent's car. Rosenthal did not know the magnification of the binoculars he used to watch the Respondent on that day. According to Rosenthal, from his office window he is able to clearly see any pedestrian or vehicle even without the use of binoculars. The location is often used as a vantage point for investigations. He explained that he needed the binoculars to see the Respondent's license plate number, but the binoculars were not necessary to see the Respondent walking to and entering her car. Rosenthal stated that it was clear out that day, and nothing blocked his view of the Respondent. He could not recall if the Respondent's car had tinted windows. Rosenthal testified that when he observed her get into the vehicle on January 31, 2007, she was wearing a sling on her right arm.

Sergeant Nicholas Auriana

Auriana, a 14-and-a-half-year member of the Department currently assigned to the Medical Division's Absence Control Investigations Unit, assisted in the investigation of the Respondent's case. He testified that on February 8, 2007, Valenti instructed him and a Sergeant Gargiulo to see if the Respondent drove herself to the Medical Division that day. Auriana and Gargiulo went down to the street, where they observed the Respondent enter the driver's side of her vehicle, make a U-turn, and drive away. Nobody else was in the car. Auriana could not recall which hand the Respondent used to open the

door or if she was wearing a sling. He was not certain whether or not he observed the Respondent put on her seatbelt. Auriana was located on the same side of the street as the Respondent, approximately half a block away. According to Auriana, the Respondent's driving was not erratic.

On cross-examination, Auriana testified that his observation of the Respondent occurred during the daytime. He stated that there was not a lot of traffic on the street although the traffic at that location can sometimes get backed up. He was not certain if it was a clear day. According to Auriana, he had a fairly clear view of the Respondent.

Lieutenant Thomas Buzitta

Buzitta, a 15-year member of the Department currently assigned to Housing Borough Manhattan, was assigned as a sergeant in the 17 Precinct from 2001 until 2007. In 2006, he worked as the Cabaret Sergeant, which means he supervised a team of police officers who handled conditions at bars. The Respondent at one point worked on Buzitta's team, but she was no longer assigned to the team on February 11, 2006. On that day, the Respondent was assigned to the post of the Israeli Mission. Buzitta explained that the Israeli Mission is located at 800 Second Avenue, which is between 42nd and 43rd Streets. He further explained that an officer assigned to that post has to "pretty much remain in front of that building, or on the sides of that building." There is a police booth located in front of the main entrance to the building, on Second Avenue in the middle of the block. The booth has a seat inside and plexiglass windows on all four walls. Buzitta could not recall if there is a telephone in the booth, but all officers assigned to the post are issued a Department radio. Buzitta explained that although the booth is there to provide shelter for

officers, the post is not just for sitting. Instead, according to Buzitta, an officer assigned to the post should frequently walk up and down the post to inspect for possible hazards.

There are two bars within view of the booth. Those bars are usually full to capacity on the weekends, and the corner of 42nd Street and Second Avenue is known for being a dispute-prone location. Buzitta testified that officers assigned to the Israeli Mission post regularly address disputes at the corner, and if an officer observes a dispute that she cannot handle on her own, she should summon assistance on the radio.

Buzitta testified that at approximately 3:30 a.m. on Saturday, February 11, 2006, he was driving down Second Avenue in a Department van with Police Officer Brian Johnson. According to Buzitta, when he drove past the booth that day, he observed the Respondent slumped down as if she might have been sleeping. He stated that there were no lights on inside the booth and he could not see everything inside. There were street lights, though, and he could tell that the person inside the booth was slumped over. Buzitta instructed Johnson to drive around the block so that he could come back to the booth and inspect the Respondent. As the van drove southbound on Second Avenue from 45th Street, Buzitta observed a large gathering of people at 42nd Street. Street lights were on, but Buzitta could not recall if lights from the bar were also on. Before the van passed the booth, Buzitta was able to see punches being thrown. At that point, Johnson turned the van's lights and siren on. As the van approached 42nd Street, it cut across two or three lanes of traffic and passed approximately 12 feet from the booth. The van ultimately came to a stop perpendicularly to the sidewalk approximately 50 feet from the booth. The van's turret lights stayed on, but Buzitta could not recall if the siren also stayed on. Buzitta and Johnson jumped out of the van and separated the parties involved in the

dispute. According to Buzitta, there were 15 to 20 people present, and he was at the scene for one or two minutes before the encounter was quieted. No arrests were made and no summonses were issued. Neither he nor Johnson called for backup. Buzitta could not recall if there was any noise involved with the dispute. Buzitta testified that at no point during the encounter did the Respondent provide any sort of assistance. When the incident was over, he turned around toward the booth. According to Buzitta, he observed the Respondent inside the booth, looking in his direction, leaning back with her hands folded across her chest. He could not recall if the door to the booth was opened or closed. Buzitta walked up to the booth and expressed to the Respondent that he was upset with her for failing to assist with the dispute. Buzitta could not recall the Respondent saying anything in response. Buzitta testified that at the very least the Respondent should have called for assistance on the radio.

On cross-examination, Buzitta testified that he at no point radioed for assistance nor made any radio transmission at all about the dispute. He did not prepare a Stop, Question, and Frisk Report for anybody involved. He stated that he was not paying attention to traffic conditions on the street, but traffic could not have been that bad since Johnson was able to maneuver across multiple lanes of traffic. Buzitta reiterated that he observed the Respondent slumped over when he drove past the booth the first time. He clarified that her body was not slumped over, but her head was slumped sideways. Buzitta thought at the time that the Respondent might be sleeping or have something wrong with her. The Respondent has not been charged with being inattentive while on post. It took approximately a minute for the van to drive around the block.

The Respondent was a member of the Cabaret Unit until a few months before the

incident took place. Buzitta testified that the Respondent was transferred out of the unit because several other officers in the unit told him that they did not want to work with her. He stated that the critical function of the officer assigned to the Israeli Mission post is to protect the mission.

The Respondent's Case

The Respondent testified in her own behalf.

Respondent Police Officer Donna Gaudino

The Respondent, an 18-year member of the Department, is currently assigned to the 17 Precinct. She testified that she worked in the Cabaret Unit for a year and a half but was transferred out of the unit in December 2005. According to the Respondent, her Commanding Officer informed her that she was transferred out of the unit because Buzitta was "not able to handle [her]." After her transfer from the unit, she was regularly assigned to a fixed post. She explained that when she was assigned to the Israeli Mission fixed post, she was responsible for watching over the front of the Mission, ensuring that no vehicles parked or suspicious behavior occurred in front of the building. She further explained that upon arriving at post, she inspected the post corner to corner. After that, according to the Respondent, there was no requirement to go out and walk around the building.

The Respondent testified that in the evenings there are usually people out on the sidewalk near the corner of 42nd Street and Second Avenue because people at McFadden's Bar and the neighboring bar, Calico Jack's, go outside to smoke or talk.

On Friday nights the two bars are usually crowded. The Respondent stated that there were people out on the sidewalk while she was working on February 11, 2006. She testified that at 3:30 a.m. that day, she was on her meal break at the station house. According to the Respondent, at no point prior to meal did she see an altercation in front of the bars. Before leaving for meal, however, Buzitta walked up to the booth, thanked her, and walked away. The Respondent stated that she was dumbfounded because she did not know what Buzitta was referring to. She testified that at no point that day did she hear a radio transmission concerning an altercation at the corner. She stated that, to her knowledge, nothing occurred between 3:00 a.m. and 3:30 a.m. that day that required her to summon assistance to the scene of an altercation. Two weeks later, she was issued a Command Discipline.

[Respondent's Exhibit (RX) A is a photograph of McFadden's Bar, located at the northeast corner of 42nd Street and Second Avenue. It was taken by the Respondent at approximately 2:30 a.m. one day in September 2008. The photograph shows at least three or four street lights in the area. According to the Respondent, the lighting conditions depicted in the photograph are similar to the lighting conditions back in February 2006. RX B is a photograph of the stretch of Second Avenue located between McFadden's Bar and the entrance to 800 Second Avenue. The curb is lined with planters and metal barriers. RX C is a photograph of the security booth located in front of 800 Second Avenue. RX D is a photograph of the entire northeast corner of 42nd Street and Second Avenue.]

The Respondent testified that in January 2007 the 17 Precinct Station House was being remodeled, and she injured her right shoulder when she fell through a boardwalk in

the temporary station house. After receiving treatment at [REDACTED] hospital, she went out on sick leave. The Respondent, who lives on [REDACTED] was required to report to the Medical Division in Queens on January 12, 2007. She drove herself to the doctor's appointment that day. She parked on Junction Boulevard, just south of the Medical Division building. The windows of her personal vehicle are tinted. The doctor instructed her that day to see an orthopedist. The Respondent returned to the Medical Division on January 16, 2007. She again drove herself to the Medical Division and met that day with Lichtenstein. According to the Respondent, Lichtenstein did not specifically ask her who drove her to the appointment, but she told Lichtenstein that day that she drove herself. The Respondent testified that she did not tell Lichtenstein anything about her sister having to drive her, but did tell him that her sister lives with her and so is there if she (the Respondent) "needed to go around." At no point was the Respondent instructed by a doctor not to drive.

On January 22, 2007, the Respondent drove herself again to the Medical Division and met with Lichtenstein. She parked at the same place as before and put her Department parking plaque on display. She did not take any steps to conceal the location of her car. She wore her right arm in a sling to keep it immobilized. She stated that Lichtenstein asked her that day how she got around, and she told him that her sister would drive her around if she needed her to. According to the Respondent, she did not specifically tell Lichtenstein that her sister drove her to the Medical Division that day. After her meeting, she walked directly to her car. The Respondent stated that she never wears a seatbelt because it makes her feel restricted.

On January 31, 2007, the Respondent drove herself again to the Medical Division

and met with Lichtenstein. She parked at the same place as before and walked straight to the building. She was still wearing a sling. The Respondent testified that she did not tell Lichtenstein that she was unable to drive or say anything that day concerning her ability to drive. She further testified, however, that she told Lichtenstein that she drove herself to the appointment and also told him again that her sister would drive her around if she needed her to. After her examination, the Respondent was removed from sick leave and placed on limited duty status. She walked directly to her car and did not make any attempt to conceal the car's location. She took the sling off of her arm when she got into the car. The Respondent stated that she did not have difficulty driving because she drives with her left hand and rests her right arm on the console.

On February 8, 2007, the Respondent returned to the Medical Division and met with Goldman. Her appointment lasted five or ten minutes. The Respondent could not recall if Goldman specifically asked her how she got to the Medical Division that day. The Respondent testified that at no point did she tell Goldman that her sister drove her to the appointment or that she was unable to drive. According to the Respondent, at no point in January or February 2007 did she tell any Department doctor that she was in so much pain that she needed to be driven to the Medical Division by her sister. All she told the doctors, according to the Respondent, was that her sister was available to drive her around if necessary. At no point during a February 20, 2007 Official Department Interview did the Respondent state that her sister drove her to the Medical Division.

On cross-examination, the Respondent reiterated the she did not have difficulty driving while injured because she drives with her left hand. When asked why then did her sister come up in conversations with the doctors, the Respondent at first replied, "Because,

if I needed to use both hands, sometimes I wouldn't be able to drive, so she would drive me." Upon being asked the same question a second time, the Respondent conceded that she did not have an answer. The gear shift in her car is on the right side of the driver's seat in between the two front seats. The Respondent stated that, therefore, she needed to use her right hand to shift gears. She explained that she was able to move her arm in that manner because it only required her to move it back and forth for approximately three inches in either direction. It did not require her to lift her arm or move it very far from her body. The Respondent testified that she never made a cell phone call while making a turn in front of the Medical Division building.

The Respondent testified that she had never met Goldman before her February 2007 appointment with him. According to the Respondent, she had previously met with Lichtenstein and had had difficulty dealing with him. She explained that once when she met with Lichtenstein about a back injury, he told her that the medical documents she had brought with her were not good enough and flung the documents at her. She stated that at no point during her three meetings with Lichtenstein in January 2007 did he ask her how she got to the Medical Division. She further stated that she told nobody at the Medical Division that her sister drove her there.

The Respondent testified that upon arriving at post on February 11, 2006, she conducted an inspection of the post, meaning she walked along Second Avenue from the corner of 42nd Street to the corner of 43rd Street. She conceded that as the officer assigned to that post, she was responsible for conditions along that entire block. She went on to state, however, that from her position in the booth she would not have even been aware of a condition occurring at the corner. The booth has glass windows. The bottom

halves of the windows are tinted. The Respondent testified that there is nothing that prevents an officer located inside the booth from looking outside. She stated that she saw a Department vehicle drive past the booth a little before 3:30 a.m. that day. According to the Respondent, after the van passed the booth, the vehicle's turret lights went on. She did not recall the van's sirens being on. The Respondent testified that at the time she was looking in the direction of 43rd Street as she prepared a Police Accident Report, but she turned around and saw the van come to a stop at the corner of Second Avenue and 42nd Street, where a crowd was gathered. She then turned her back to the van until she finished the report that she was working on. When she turned back around again to face the van, she saw Buzitta and Johnson standing on the corner, but she did not see either of them take any sort of police action. When asked how long her back was turned to the van, the Respondent replied, "I can't tell you how long it was. It could have been a second, or it could have been maybe a minute or two." She stated that if there had been something going on at the corner, it was over by the time she completed the report. She testified that sometimes officers put their vehicle lights on just to stop people from urinating or drinking in public. She conceded, however, that she could not know if there was anything going on at the corner because she had turned her back to the scene.

On redirect-examination, the Respondent testified that there were 15 or 20 people on the street between the booth and the corner where she saw Buzitta and Johnson standing. None of those people was involved in an altercation.

FINDINGS AND ANALYSIS

Disciplinary Case No. 82442/06

The Respondent stands charged with failing to render police service to stop or

intervene in a fight outside a tavern located in her assigned area and failing to render police assistance to other uniformed members of the service who had responded to the fight. The Respondent was assigned that day to the Israeli Mission fixed post and spent the tour in the booth located in front of the entrance to that building. When Buzitta came to inspect the Respondent in the booth, he observed a physical altercation at the corner. From simply looking at the Respondent's testimony it is apparent that the Respondent responded inadequately to the incident. The Respondent testified that she saw the Department van drive past the booth, turn its turret lights on, and come to a stop at the corner, where a crowd was gathered. She also testified that there were two bars at that corner, the bars are usually crowded on the weekend (and it was a Saturday that day), and the corner is known for being a dispute-prone location. She conceded that after she saw the van come to a stop at the corner, she turned her back to the scene until she finished a Police Accident Report that she had been working on.

Fortunately for all of the parties involved, Buzitta and his driver, Johnson, were able to handle the altercation at the corner without assistance. When the Respondent saw the van with its lights on stopped at the crowd at the corner, however, she did not know the nature of the situation. At that point, even if she was unsure of what was taking place she should have stepped out of the booth to ascertain what was going on and to see if she could be of assistance to her fellow officers. It could be argued that the Respondent failed to take this action because she was hesitant to leave the entrance to the Mission unattended. If that were the case, however, she could have at the very least used her radio to summon another unit to the location. Instead, she turned her back to the incident, thereby exhibiting utter disregard for the safety of her fellow members of the service.

Accordingly, the Respondent is found Guilty as charged.

Disciplinary Case No. 83083/07

The Respondent stands charged with engaging in conduct prejudicial to the good order, efficiency, or discipline of the Department by falsely stating to a Department Surgeon on four occasions that she was unable to drive and falsely stating on three of those occasions that her sister drove her to the Medical Division. It went undisputed at trial that the Respondent drove herself to the Medical Division on the four dates indicated in the charges. Not only did Rosenthal and Auriana observe the Respondent driving on those dates, but the Respondent herself admitted it. The only issue disputed at trial was what exactly the Respondent told her doctors.

While Lichtenstein and Goldman testified that the Respondent told them she could not drive and was driven to her appointment by her sister, the Respondent testified that all she told the doctors was that her sister was available to drive her around if necessary. If this case involved alleged statements made by the Respondent on a single occasion, it would be easy to write the differing versions of the statements off as a miscommunication or misunderstanding. Because we are dealing with two different doctors on four separate occasions, however, this becomes impossible. The Respondent presented no possible motive for Lichtenstein and Goldman to testify less than truthfully, and it is highly unlikely that *both* of these witnesses would mistakenly believe that the Respondent said one thing when she, in fact, said another. A conclusion that the Respondent did actually make the statements attributed to her by Lichtenstein and Goldman is supported not only by the consistent, credible testimony of the doctors, but is also supported by the testimony provided by the Respondent herself. The Respondent

testified multiple times that she did not have difficulty driving. When asked why then did she bring up in conversation with the doctors the subject of her sister driving her around, the Respondent could not provide an answer. It only makes sense that the Respondent brought up the subject of her sister because she was claiming to be reliant on her sister for transportation. Accordingly, the Respondent is found Guilty as charged.


PENALTY

The Respondent has been found Guilty of failing to render police service to stop or intervene in a fight outside a tavern located in her assigned area and failing to render police assistance to other uniformed members of the service who had responded to the fight. The Respondent claimed that, instead of taking appropriate action, she turned her back to the police incident in order to complete a Police Accident Report. Although the Respondent was not charged with failing to remain alert, the Court is reminded of a previous case in which a 17-year member who was charged with failing to remain alert raised the defense that he was not sleeping but was rather studying for a promotional exam. In that case, Disciplinary Case No. 68251/93, the Respondent forfeited 17 suspension days already served, and the Court noted, "The Department does not have to establish that the Respondent was unconscious. . . . Rather, it must show that the officer was not alert, as that term is understood in police work. An officer who is alert is acutely observing what is happening within his eyeshot and earshot." By turning her back to a police incident in order to prepare a report, the Respondent in the current case similarly made a conscious decision to avoid what was happening within eyeshot of her location. In addition, and arguably more egregiously, she displayed a complete indifference to the safety of her fellow officers who did become involved in the incident.

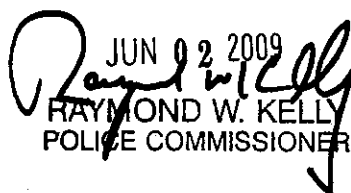
The Respondent has also been found Guilty of engaging in conduct prejudicial to the good order, efficiency, or discipline of the Department by falsely stating to a Department Surgeon on four occasions that she was unable to drive and falsely stating on three of those occasions that her sister drove her to the Medical Division. Disciplinary Case No. 80916/05 was a strikingly similar case in which an 11-year member with one prior disciplinary adjudication forfeited 30 vacation days for falsely stating to the Department Surgeon on four occasions that he was unable to drive. The Department has recommended as a penalty that the Respondent be placed on one year dismissal probation and a forfeiture of 30 suspension days and 30 vacation days. This Court concurs with that recommendation.

Based on all of the above, I recommend that the Respondent be DISMISSED from the New York City Police Department but that her dismissal be held in abeyance for a period of one year pursuant to Section 14-115(d) of the Administrative Code, during which time she remains on the Force at the Police Commissioner's discretion and may be terminated at any time without further hearing. I further recommend that the Respondent forfeit a period of time consisting of 30 suspension days and 30 vacation days.

Respectfully submitted,


John Grappone
Assistant Deputy Commissioner – Trials

APPROVED


JUN 2 2009
RAYMOND W. KELLY
POLICE COMMISSIONER